

**BEFORE THE WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

INDEPENDENCE COAL COMPANY, INC.,

Appellant,

v.

Appeal No. 10-07-EQB

DIRECTORS, DIVISION OF WATER AND WASTE
MANAGEMENT AND DIVISION OF MINING AND
RECLAMATION, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Appellee.


ORDER GRANTING APPELLANT'S MOTION FOR STAY

Pending before this Board is a Motion for Stay filed by Appellant Independence Coal Company, Inc. The Appellant's Motion seeks a stay of: (1) the Department of Environmental Protection ("DEP")'s denial of their respective WV/NPDES modification applications as set forth in the March 4, 2010 letters to the Appellants which are the subject of this appeal ("Denial Orders"); and (2) the implementation of the Denial Orders, by staying the April 5, 2010 or other deadline set forth in the Appellant's respective existing compliance schedules for bringing the subject discharges into compliance with final water quality-based effluent limits ("WQBELs") for selenium.

The Orders denied Appellant's permit modification applications to extend the respective compliance schedules for achieving compliance with water-quality based effluent limits until the July 1, 2012 deadline established by the West Virginia Legislature in W.Va. Code § 22-11-06 (2009). Appellant seeks a stay because implementation of the Denial Orders would result in final selenium effluent limits becoming effective in April and May of 2010 under the respective compliance schedules for the Appellant's permits.

Finding it necessary to allow the Appellant the opportunity to properly prepare for and conduct a proper evidentiary hearing on the grounds for appeal set forth in Appellant's Notice of Appeal, the Board finds it proper to grant the motion for stay. The Board finds that to allow the compliance schedules to expire prior to a decision by this Board on the appeal of the WVDEP's decision would result in a violation of the due process rights of the Appellant. Therefore the Board STAYS each of the March 4, 2010 letters (Denial Orders) under appeal, and in order to STAY the implementation of the Denial Orders, STAYS those parts of the Appellant's respective permits and/or compliance schedules that would otherwise impose final selenium effluent limits beginning in April or May, 2010 until further order or final order of this Board.

It is so ORDERED and ENTERED this 11th day of March, 2010.


Edward M. Snyder, Chairman

ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

INDEPENDENCE COAL COMPANY, INC.

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WASTE MANAGEMENT AND DIVISION OF
MINING AND RECLAMATION,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Appellee.

CERTIFICATE OF SERVICE

This is to certify that I, Jackie D. Shultz, Clerk for the Environmental Quality Board, have this day, the 12th day of March, 2010, served a true copy of the foregoing **“Order for Continuance and Notice of Hearing,” “Notice of Prehearing Conference”** and **“Order Granting Appellant’s Motion for Stay”** to all parties in Appeal No. 10-07-EQB, by mailing the same via United States Mail, with sufficient postage, to the following address:

via certified first-class mail:

Robert G. McLusky, Esquire
Jackson Kelly PLLC
PO Box 553
Charleston, WV 25322

Certified Mail #

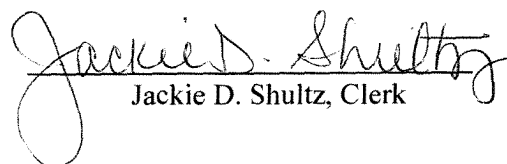
91 7108 2133 3937 0943 8988

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Jackie D. Shultz, Clerk